



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Loarett Saltonstall Building
100 Cambridge Street, Boston 02204

November 23, 1983

You request that ("Corporation") be classified as a tangible property corporation under General Laws Chapter 63, Section 30(10), for its taxable years ending August 31, 1983, and August 31, 1984.

The Corporation was incorporated in Delaware on April 3, 1981. It is engaged in Massachusetts in developing, manufacturing and marketing products and systems with commercial applications. Its taxable year ends on August 31. It has never been classified as a tangible property corporation.

From its incorporation until June 3, 1983, the Corporation was a more-than-80-per-cent-owned subsidiary of ("Parent"). For all years through August 31, 1982, the Corporation has filed its Massachusetts and federal returns as part of the Parent's consolidated group.

In March, 1983, the Corporation acquired certain technology and other assets of the Parent's diagnostic group for approximately \$10,300,000. The diagnostic group was engaged in manufacturing products and systems and in related research and development activities. Prior to March, 1983, the book value of the Corporation's assets was nominal.

On June 3, 1983, the Corporation made a public offering of 2,400,000 shares of its stock. Upon the completion of the offering, the Parent owned approximately 70 per cent of the Corporation's stock.

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The Corporation has filed its federal income tax return on a consolidated basis with the Parent for the short period from September 1, 1982 to June 2, 1983, and will file a separate federal return for the period from June 3, 1983, to August 31, 1983. The Corporation has filed and will file Massachusetts corporate excise returns on the same basis.

The net proceeds received by the Corporation from the sale of its common stock on June 3, 1983 amounted to approximately \$38,000,000. Of this, the Corporation intends to use:

(a) Approximately \$9,000,000 over the next three years to purchase equipment;

(b) Approximately \$5,000,000 over the next three years to make leasehold improvements in connection with the production facilities it will be establishing;

(c) Approximately \$11,000,000 over the next three years for research and development;

(d) Approximately \$10,300,000 to repay all of its obligations to the Parent incurred in connection with the transfer of the assets to the Corporation; and

(e) The balance for marketing expenses and general corporate purposes.

Pending such application, the net proceeds will be invested in high quality securities.

Based on its June 3, 1983 balance sheet, with the addition of the net proceeds from the public offering, the Corporation's ratio of Massachusetts tangible property not subject to local taxation to total assets, less tangible property subject to local taxation, is 1.15 per cent. The Corporation has no investment in foreign corporations.

The Corporation's pro forma balance sheet as of August 31, 1983, shows no substantial difference from the balance sheet as of June 3, 1983.

Based on its planned equipment purchases over the next three years, the Corporation's Massachusetts tangible assets are expected to exceed the 10 per cent minimum for

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classification as a tangible property corporation by August 31, 1985. The Corporation cannot make the required investment in Massachusetts tangible property not subject to local taxation for some time, because most of the equipment it will purchase will be specially designed for it and cannot be delivered immediately.

The Massachusetts corporate excise equals the greater of (1) \$228 or (2) the sum of:

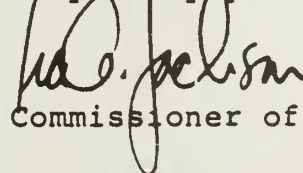
(a) 9.5 per cent of net income allocated to Massachusetts; and

(b) \$2.60 per \$1,000 upon the value of its tangible property not subject to local taxation and situated in Massachusetts on the last day of the taxable year in the case of a tangible property corporation, or its net worth allocable to Massachusetts in the case of an intangible property corporation. G.L. c. 63, § 39.

A "tangible property corporation" is a corporation whose tangible property situated in the Commonwealth on the last day of the taxable year and not subject to local taxation is 10 per cent or more of such portion of its total assets on the last day of the taxable year less those assets which are situated in the Commonwealth and are subject to local taxation, and, for a foreign corporation, less its investment in foreign corporations not registered to do business nor doing business in the Commonwealth, as shall be found by multiplying said amount by such corporation's income apportionment percentage, or a corporation which, in the judgment of the Commissioner, should be so classified. G.L. c. 63, § 30(10).

Discretionary classification as a tangible property corporation on the basis of prospective facts is not appropriate, where the corporation has never been a tangible property corporation and its tangible property ratio is at or about one per cent. Accordingly, it is ruled that the Corporation is an intangible property corporation for its taxable year ended August 31, 1983. If, on August 31, 1984, its Massachusetts tangible property ratio remains at or about one per cent, it will continue to be classified as an intangible property corporation for its taxable year ending on that date.

Very truly yours,



Commissioner of Revenue